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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**

6
7 MARTIN STRAZNICKY,

8 Plaintiff,

9 vs.

10 ROMANA STRAZNICKA,

11 Defendant.
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3:18-cv-00394-RCJ-CBC

ORDER

13 Plaintiff Martin Straznicky and Defendant Romana Straznicka are currently engaged in
14 divorce proceedings in California. Meanwhile, Plaintiff has sued Defendant in diversity in this
15 Court, alleging seven counts of defamation and two counts of intentional interference with
16 contractual relations and/or prospective economic advantage under state law, based on
17 statements Defendant allegedly made over the telephone about Plaintiff to third parties in
18 Nevada, New Mexico, and California. Both parties are proceeding *in pro se*. Defendant moved
19 to dismiss for lack of diversity, arguing that Plaintiff spent most of his time in California. The
20 Court denied the motion, because Defendant did not deny that she resided in California, and
21 Plaintiff made a sufficient showing that he resided in Nevada. While the first motion to dismiss
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1 was pending, Defendant filed the present motion to dismiss, in which she argues there is no
2 diversity because she is not an American citizen.¹

3 As previously noted, if Defendant resides in California, which appears not to be in
4 dispute, there is complete diversity, because Plaintiff has shown himself to be a resident of
5 Nevada. *See* 28 U.S.C. § 1332(a)(1) (if Defendant is an American citizen); *id.* § 1332(a)(2) (if
6 she is not, which now also appears to be settled via Defendant's admission in the present
7 motion). As the Court also noted, if Defendant is not a permanent resident alien, i.e., if she is
8 only present pursuant to a visa or is present unlawfully, she is diverse from Plaintiff even if they
9 reside in the same state. *See id.* § 1332(a)(2). This all presumes, of course, that Plaintiff is
10 himself an American citizen. If he is not, Congress cannot under Article III of the Constitution
11 grant this Court power over any case between him and another alien, regardless of either of their
12 immigration statuses. U.S. Const. art. III, § 2; *Yokeno v. Sekiguchi*, 754 F.3d 649, 657 (9th Cir.
13 2014). Defendant has not shown (or alleged) that Plaintiff is not an American citizen. But this
14 may be because she does not realize the legal significance of the issue. Moreover, Plaintiff has
15 not timely responded to the present motion, which can be deemed consent to its grant. Local R.
16 7-2. Given the circumstances, the Court will order Plaintiff to make a statement concerning his
17 citizenship before ruling on the present motion. If he is not an American citizen, or if he fails to
18 make a statement on the issue, the Court will dismiss for lack of jurisdiction. It is clear that
19 Defendant is an alien. Without some evidence that Plaintiff is not, the Court cannot be satisfied
20 of its power to proceed.

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24 ¹ Plaintiff also recounts various alleged wrongdoings by Plaintiff that are not relevant to the motion.

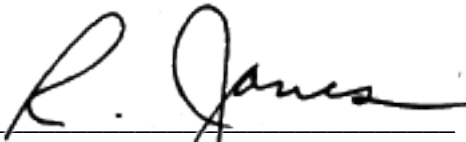
1 **CONCLUSION**

2 IT IS HEREBY ORDERED that a ruling on the Motion to Dismiss (ECF No. 8) is
3 DEFERRED.

4 IT IS FURTHER ORDERED that Plaintiff shall file an affidavit or declaration within
5 seven (7) days indicating whether he is an American citizen. Failure to comply with this order
6 will result in dismissal for lack of jurisdiction without further notice.

7 IT IS SO ORDERED.

8 DATED: This 11th day of March, 2019.

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12 ROBERT C. JONES
13 United States District Judge
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